IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
A.O. NO. 241 of 2005

Arun Kumar Bedi S/o Late Jagdish Chandra
Bedi, R/o A-2/66, Lafance Road,
Delhi-35,
Presently residing at Opp. Sessions Court,
Brij Vihar, Haldwani
District District Nainital ....Appellant.

Versus

1-New India Assurance Co. Ltd.
Opp. Sessions Court, Nainital
Road, Haldwani through
Divisional Manager.

2- Rafiqueul Rehman S/o Jalilurrehman
R/o Takia Mubarak Shah Khan
District Rampur,
Owner of Vehicle
No. U.P. 13-D/7341 .... Respondents.

Sri Z.U. Siddiqui, learned counsel for the appellant.
Sri D.K. Sharma, learned counsel for the Insurance Company.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 30-6-2006

This appeal, U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and order dated 2-4-2005, passed by M.A.C.T./Addl. District Judge/ I F.T.C., Haldwani, District Nainital, in MACP No. 45 of 2004 Arun Kumar Bedi Vs. New India Assurance Co. Ltd and another, thereby awarding compensation of Rs. 1,12,000/- along with interest @ 9% per annum from the date of presentation of claim petition till thedate of actual payment, payable by New India Assurance Company.

2. Brief facts of the case are that on 12-7-2003 at about 6 A.M. the claimant Arun Kumar Bedi along with his relatives riding in Car bearing No. U.A.04-5070, was going to Delhi from Haldwani and when they reached at Police Chauki Hawalia city, within the P.S. of Civil Lines Rampur, Truck No. U.P. 13-D-7341 came there from opposite direction at a high speed and dashed the car due to which the claimant Arun Kumar Bedi sustained grievous injuries whereas the two other occupants of the said car died due to the injuries sustained by them in the accident. The right leg of the claimant had broken and also sustained serious injury at his right elbow. The injured was brought to Civil Hospital rampur from where he was referred to Sir Ganga Ram Hospital New Delhi where he was operated. The claimant alleged that he spent about One lac rupees on his treatment. The claimant is doing the business of readymade clothes and earns Rs. 5000/- per month. He claimed Rs. Eight lacs as compensation.

3. The O.P. New India Assurance Company filed its W.S. alleging therein that the accident had occurred due to the fault of the driver of Car No. U.A. 04-5070 and owner/cleaner and insurer of the said car were necessary parties to the claim but they have not been made parties. It was alleged that the Insurance Company can be held liable to pay compensation when it is amply proved that there was no violation of conditions of insurance policy.

4. The O.P. /owner of Truck No. U. 13-D/7341 has filed his W.S. alleging therein that the Truck was insured with New India Assurance Company and its driver was having valid driving licence at the time of accident, therefore, he is not liable to pay any compensation.

5. The Tribunal on the basis of pleadings of parties, framed relevant issues. In support of his claim the claimant produced Raghunandan as P.W.1, himself as P.W.2, Gaurav Malhotra Record Technician and produced several documents pertaining to his medical treatment, x-ray etc. The O.Ps. produced Samiurrehman the conductor of offending truck and filed copies of driving licence, insurance policy etc.

6. The Tribunal on appreciation of evidence on record awarded Rs. 1,12,000/- along with interest @ 9% per annum in favour of the claimant.

7. Being dissatisfied with the amount of compensation, the claimant has filed this appeal for enhancement of compensation.

8. We have heard the learned counsel for the parties and perused the record.

9. Learned counsel for the appellant/claimant has argued that the impugned judgment and award in relation to the compensation is against the weight of the evidence on record as the Tribunal has wrongly calculated the amount of compensation without looking into the material available on the record.

10. It has also been submitted that the Tribunal has not taken into consideration this aspect of the matter that the appellant has undergone so many operations and steel rods were inserted in his hand and in the leg which are to be still removed and in future one operation is again to be performed for which the Doctors have given an estimate for Rs. 50,000/- for future treatment. The record shows that there was a head on collusion between the Santro Car in which the claimant

was traveling and the truck bearing Registration No. UP13D 7341 which was coming from the opposite direction at the time of the accident. The driver owner and the insurer of the Santro car have not been arrayed as the respondents by the claimant as the claimant himself has admitted in his deposition that the driver of Santro car was his brother-in-law. Therefore, it appears that the claimant in order to save the skin of the driver and the owner as well as insurer of the Santro Car has deliberately not impleaded them as a party in the claim petition. The dictum of 'Res ipsa loquitor' is applicable in the cases of tortious liability. The evidence has not been properly assessed by the trial court in this regard, as the evidence clearly show that it was a head on collusion but neither any issue was framed by the trial court nor the trial court has recorded any finding with regard to the issue of the contributory negligence. The Insurance Company has also not come against the finding of the trial court in this regard. Therefore, we are not supposed to touch the finding recorded by the Tribunal with regard to the rash and negligent driving of the offending truck which resulted this accident.

11. However, as far as the quantum of compensation awarded by the Tribunal is concerned, the evidence on record show that the claimants have examined P.W.2 – Gaurav Malhotra an employee of Sir Ganga Ram Hospital, New Delhi who has proved the medical bills filed by the claimants. This witness has also proved that the appellant was admitted in the hospital w.e.f. 12.07.2003 to 17.07.2003.

12. The bills which have been filed by the appellant indicate that he has spent about Rs. 67,000/- in his medical treatment. Therefore, the Tribunal has rightly awarded this amount to the claimants.

13. The Tribunal has also awarded an additional amount of Rs. 40,000/- which the appellant has to incur in his future medical treatment and we are of the view that the amount of compensation awarded by the Tribunal under this head is sufficient and does not require any interference.

14. The Tribunal has further awarded an amount of Rs. 5,000/- to the appellant for suffering pain and agony on account of the injuries sustained by him in the accident. We are of the view that the trial court as awarded just, proper and adequate amount of compensation to the claimant.

15. In view of the above assessment of evidence available on record, we come to the conclusion that the impugned judgment and award passed by the Tribunal does not require any interference. We find ourselves in total agreement with the finding recorded by the Tribunal.

16. As far as the rate of interest indicated in the impugned judgment and award is concerned, the same is not liable to be disturbed.

17. On the basis of the assessment of evidence available on record, we come to the conclusion that the appeal lacks merit and is liable to be dismissed.

18. In view of the above, the judgment and award passed by the Tribunal concerned in M.A.C.P. No. 45 of 2004 is hereby confirmed.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

June 30, 2006
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